

(2) Conditions for taking effect under United States law

No such amendment shall enter into force with respect to the United States, and no such requirement, amendment, or recommendation shall be implemented under United States law, unless—

(A) the President, after consultation with the Congress under paragraph (1), notifies the House of Representatives and the Senate of his determination and publishes notice of that determination in the Federal Register,

(B) the President transmits a document to the House of Representatives and to the Senate containing a copy of the text of such requirement, amendment, or recommendation, together with—

(i) a draft of a bill to amend or repeal provisions of existing statutes or to create statutory authority and an explanation as to how the bill and any proposed administrative action affect existing law, and

(ii) a statement of how the requirement, amendment, or recommendation serves the interests of United States commerce and why the legislative and administrative action is necessary or appropriate to carry out the requirement, amendment, or recommendation, and

(C) the bill submitted by the President is enacted into law.

(3) Recommendations as to application

The President may make the same type of recommendations, in the same manner and subject to the same conditions, to the Congress with respect to the application of any such requirement, amendment, or recommendation as he may make, under section 2112(f) of this title, with respect to a trade agreement.

(4) Congressional procedures applicable

The bill submitted by the President shall be introduced in accordance with the provisions of subsection (c)(1) of section 2191 of this title, and the provisions of subsections (d), (e), (f), and (g) of such section shall apply to the consideration of the bill. For the purpose of applying section 2191 of this title to such bill—

(A) the term “trade agreement” shall be treated as a reference to the requirement, amendment, or recommendation, and

(B) the term “implementing bill” or “implementing revenue bill”, whichever is appropriate, shall be treated as a reference to the bill submitted by the President.

(d) Unspecified private remedies not created

Neither the entry into force with respect to the United States of any agreement approved under section 2503(a) of this title, nor the enactment of this Act, shall be construed as creating any private right of action or remedy for which provision is not explicitly made under this Act or under the laws of the United States.

(Pub. L. 96-39, § 3(a)–(c), (f), July 26, 1979, 93 Stat. 148–150.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d), is Pub. L. 96-39, July 26, 1979, 93 Stat. 144, known as the Trade Agree-

ments Act of 1979. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of this title and Tables.

CODIFICATION

As originally enacted section 3 of Pub. L. 96-39 consisted of subsecs. (a) to (c), (e) and (f), without a provision designated as (d). Subsec. (e) amended section 2111(b)(1) of this title and subsec. (f) has been redesignated as (d) for the purposes of codification of this section.

UNITED STATES-CANADA FREE-TRADE AGREEMENT

Subsec. (c) of this section applicable as if United States-Canada Free-Trade Agreement, which entered into force on Jan. 1, 1989, were an agreement approved under section 2503(a) of this title, see section 102(e) of Pub. L. 100-449, set out in a note under section 2112 of this title.

SUBCHAPTER I—GOVERNMENT
PROCUREMENT

§ 2511. General authority to modify discriminatory purchasing requirements

(a) Presidential waiver of discriminatory purchasing requirements

Subject to subsection (f) of this section, the President may waive, in whole or in part, with respect to eligible products of any foreign country or instrumentality designated under subsection (b) of this section, and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Government procurement that would, if applied to such products and suppliers, result in treatment less favorable than that accorded—

(1) to United States products and suppliers of such products; or

(2) to eligible products of another foreign country or instrumentality which is a party to the Agreement and suppliers of such products.

(b) Designation of eligible countries and instrumentalities

The President may designate a foreign country or instrumentality for purposes of subsection (a) of this section only if he determines that such country or instrumentality—

(1) is a country or instrumentality which (A) has become a party to the Agreement or the North American Free Trade Agreement, and (B) will provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products;

(2) is a country or instrumentality, other than a major industrial country, which (A) will otherwise assume the obligations of the Agreement, and (B) will provide such opportunities to such products and suppliers;

(3) is a country or instrumentality, other than a major industrial country, which will provide such opportunities to such products and suppliers; or

(4) is a least developed country.

(c) Modification or withdrawal of waivers and designations

The President may modify or withdraw any waiver granted pursuant to subsection (a) of this section or designation made pursuant to subsection (b) of this section.

(d) Omitted**(e) Procurement procedures by certain Federal agencies**

Notwithstanding any other provision of law, the President may direct any agency of the United States listed in Annex 1001.1a–2 of the North American Free Trade Agreement to procure eligible products in compliance with the procedural provisions of chapter 10 of such Agreement.

(f) Small business and minority preferences

The authority of the President under subsection (a) of this section to waive any law, regulation, procedure, or practice regarding Government procurement does not authorize the waiver of any small business or minority preference.

(Pub. L. 96–39, title III, § 301, July 26, 1979, 93 Stat. 236; Pub. L. 100–418, title VII, § 7005(e), Aug. 23, 1988, 102 Stat. 1553; Pub. L. 103–182, title III, § 381(a), Dec. 8, 1993, 107 Stat. 2128.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–182, § 381(a)(1), substituted “Subject to subsection (f) of this section, the President” for “The President”.

Subsec. (b)(1). Pub. L. 103–182, § 381(a)(2), inserted “or the North American Free Trade Agreement” after “the Agreement”.

Subsecs. (e), (f). Pub. L. 103–182, § 381(a)(3), added subsecs. (e) and (f).

1988—Subsec. (d). Pub. L. 100–418, §§ 7004, 7005(e), temporarily added subsec. (d) which read as follows: “The authority of the President under subsection (a) of this section to waive any laws, regulation, procedure, or practice shall be effective notwithstanding any other provision of law hereafter enacted (excluding the provisions of and amendments made by the Buy American Act of 1988) unless such other provision specifically refers to and amends this section.” See Effective and Termination Dates of 1988 Amendment note below.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 381(e) of title III of Pub. L. 103–182 provided that: “The provisions of this subtitle [subtitle G (§ 381) of title III of Pub. L. 103–182, amending this section, sections 2512 and 2518 of this title, and provisions set out as a note under section 903 of Title 7, Agriculture] take effect on the date the Agreement [North American Free Trade Agreement] enters into force with respect to the United States [Jan. 1, 1994].”

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Pub. L. 100–418, title VII, § 7004, Aug. 23, 1988, 102 Stat. 1552, provided that: “The amendments made by this title [see Tables for classification] shall cease to be effective on April 30, 1996, unless the Congress, after reviewing the report required by section 305(k) of the Trade Agreements Act of 1979 [former 19 U.S.C. 2515(k)], and other relevant information, extends such date. After such date, the President may modify or terminate any or all actions taken pursuant to such amendments.”

Pub. L. 100–418, title VII, § 7005(f), Aug. 23, 1988, 102 Stat. 1553, provided that: “The amendments made by this section [amending this section and sections 10a, 10b, 10c, and 10d of Title 41, Public Contracts] shall take effect upon enactment [Aug. 23, 1988].”

EFFECTIVE DATE

Section 309 of title III of Pub. L. 96–39 provided that: “The provisions of this title [this subchapter] shall be effective on the date of enactment of this Act [July 26, 1979], except that—

“(1) the authority of the President to grant waivers under section 303 [section 2513 of this title] shall be effective on January 1, 1980; and

“(2) the authority of the President to grant waivers under section 301 [this section] shall be effective on January 1, 1981.”

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to United States Trade Representative, see section 1–201 of Ex. Ord. No. 12260, set out as a note below.

EX. ORD. NO. 12260. AGREEMENT ON GOVERNMENT PROCUREMENT

Ex. Ord. No. 12260, Dec. 31, 1980, 46 F.R. 1653, as amended by Ex. Ord. No. 12347, Feb. 23, 1982, 47 F.R. 8149; Ex. Ord. No. 12388, Oct. 14, 1982, 47 F.R. 46245; Ex. Ord. No. 12474, Apr. 17, 1984, 49 F.R. 15539; Ex. Ord. No. 13118, § 10(7), Mar. 31, 1999, 64 F.R. 16598; Ex. Ord. No. 13284, § 12, Jan. 23, 2003, 68 F.R. 4076, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511–2518), and Section 301 of Title 3 of the United States Code, and in order to implement the Agreement on Government Procurement, as defined in 19 U.S.C. 2518(1), it is hereby ordered as follows:

1–1. RESPONSIBILITIES

1–101. The obligations of the Agreement on Government Procurement (Agreement on Government Procurement, General Agreement on Tariffs and Trade, 12 April 1979, Geneva (GATT 1979)) apply to any procurement of eligible products by the Executive agencies listed in the Annex to this Order (eligible products are defined in Section 308 of the Trade Agreements Act of 1979; 19 U.S.C. 2518(4)). Such procurement shall be in accord with the policies and procedures of the Office of Federal Procurement Policy ([former] 41 U.S.C. 401 et seq.).

1–102. The United States Trade Representative, hereinafter referred to as the Trade Representative, shall be responsible for interpretation of the Agreement. The Trade Representative shall seek the advice of the interagency organization established under Section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) and consult with affected Executive agencies, including the Office of Federal Procurement Policy.

1–103. The interpretation of Article VIII:1 of the Agreement shall be subject to the concurrence of the Secretary of Defense.

1–104. The Trade Representative shall determine, from time to time, the dollar equivalent of 150,000 Special Drawing Right units and shall publish that determination in the Federal Register. Procurement of less than 150,000 Special Drawing Right units is not subject to the Agreement or this Order (Article I:1(b) of the Agreement).

1–105. In order to ensure coordination of international trade policy with regard to the implementation of the Agreement, agencies shall consult in advance with the Trade Representative about negotiations with foreign governments or instrumentalities which concern government procurement.

1–2. DELEGATIONS AND AUTHORIZATION

1–201. The functions vested in the President by Sections 301, 302, 304, 305(c) and 306 of the Trade Agreements Act of 1979 (19 U.S.C. 2511, 2512, 2514, 2515(c) and 2516) are delegated to the Trade Representative.

1–202. Notwithstanding the delegation in Section 1–201, the Secretary of Defense is authorized, in accord with Section 302(b)(3) of the Trade Agreements Act of 1979 (19 U.S.C. 2512(b)(3)), to waive the prohibitions specified therein.

ANNEX**1. ACTION****2. Administrative Conference of the United States**

3. American Battle Monuments Commission
 4. Board for International Broadcasting
 5. Civil Aeronautics Board
 6. Commission on Civil Rights
 7. Commodity Futures Trading Commission
 8. Consumer Product Safety Commission
 9. Department of Agriculture (The Agreement on Government Procurement does not apply to procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs)
 10. Department of Commerce
 11. Department of Defense (Excludes Corps of Engineers)
 12. Department of Education
 13. Department of Health and Human Services
 14. Department of Homeland Security
 15. Department of Housing and Urban Development
 16. Department of the Interior (Excludes the Bureau of Reclamation)
 17. Department of Justice
 18. Department of Labor
 19. Department of State
 20. Department of the Treasury
 21. Environmental Protection Agency
 22. Equal Employment Opportunity Commission
 23. Executive Office of the President
 24. Export-Import Bank of the United States
 25. Farm Credit Administration
 26. Federal Communications Commission
 27. Federal Deposit Insurance Corporation
 28. Federal Home Loan Bank Board
 29. Federal Maritime Commission
 30. Federal Mediation and Conciliation Service
 31. Federal Trade Commission
 32. General Services Administration (Purchases by the Tools Commodity Center, and the Region 9 Office in San Francisco, California are not included)
 33. Interstate Commerce Commission
 34. Merit Systems Protection Board
 35. National Aeronautics and Space Administration
 36. National Credit Union Administration
 37. National Labor Relations Board
 38. National Mediation Board
 39. National Science Foundation
 40. National Transportation Safety Board
 41. Nuclear Regulatory Commission
 42. Office of Personnel Management
 43. Overseas Private Investment Corporation
 44. Panama Canal Commission
 45. Railroad Retirement Board
 46. Securities and Exchange Commission
 47. Selective Service System
 48. Smithsonian Institution
 49. United States Arms Control and Disarmament Agency
 50. United States Information Agency
 51. United States Agency for International Development
 52. United States International Trade Commission
 53. Veterans Administration
 54. Maritime Administration of the Department of Transportation
 55. The Peace Corps
- [For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]
- [For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

EX. ORD. NO. 12849. IMPLEMENTATION OF AGREEMENT WITH EUROPEAN COMMUNITY ON GOVERNMENT PROCUREMENT

Ex. Ord. No. 12849, May 25, 1993, 58 F.R. 30931, provided:

WHEREAS, the United States and the European Community (EC) have entered into a Memorandum of Understanding on Government Procurement (Agreement) that provides appropriate reciprocal competitive government procurement opportunities;

WHEREAS, the commitments made in the Agreement are intended to become part of an expanded General Agreement on Tariffs and Trade Agreement on Government Procurement (GATT Code) and are an important step toward an expanded GATT Code;

WHEREAS, as a result of these commitments, U.S. businesses will obtain increased access to EC member state procurement for U.S. goods and services;

WHEREAS, I have determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act, as amended ([former] 41 U.S.C. 10a-10d) [see 41 U.S.C. 8301 et seq.], to procurement covered by the Agreement;

NOW, THEREFORE, by virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-2518), and in order to implement the Agreement, it is hereby ordered as follows:

SECTION 1. In applying the provisions of the Buy American Act, the heads of the agencies listed in Annex 1, Parts A and B, of this order are requested, as of the date of this order, to apply no price differential between articles, materials, or supplies of U.S. origin and those originating in the member states of the EC.

SEC. 2. For purposes of this order, the rule of origin specified in section 308 of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2518), shall apply in determining whether goods originate in the member states of the EC.

SEC. 3. This order shall apply only to solicitations, issued by agencies listed in Annex 1, Parts A and B, of this order, above the threshold amounts set forth in Annex 2.

SEC. 4. This order shall apply to solicitations outstanding on the date of this order, except for those for which the initial deadline for receipt of bids or proposals has passed, and to all solicitations issued after the date of this order.

SEC. 5. Except for procurements by the Department of Defense, the United States Trade Representative (USTR) shall be responsible for interpretation of the Agreement. The USTR shall seek the advice of the interagency organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) and consult with affected agencies, including the Office of Federal Procurement Policy.

SEC. 6. This Executive order is effective immediately. Although regulatory implementation of this order must await revisions to the Federal Acquisition Regulation (FAR), it is expected that agencies listed in Annex 1, Parts A and B, of this order will take all appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.

SEC. 7. Pursuant to section 25 of the Office of Federal Procurement Policy Act, as amended ([former] 41 U.S.C. 421(a)) [now 41 U.S.C. 1302, 1303], the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 30 days from the date this order is issued.

WILLIAM J. CLINTON.

ANNEX 1A

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education

Department of Energy (Not including national security procurement made in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act [42 U.S.C. 2011 et seq.]; and oil purchases related to the Strategic Petroleum Reserve)

Department of Health and Human Services
 Department of Housing and Urban Development
 Department of the Interior
 Department of Justice
 Department of Labor
 Department of State
 Department of Transportation (The national security consideration currently applicable to the Department of Defense under the GATT Government Procurement Code is equally applicable under this Agreement to the Coast Guard)
 Department of the Treasury
 United States Agency for International Development
 General Services Administration (other than Federal Supply Groups 51 and 52 and Federal Supply Class 7340)
 National Aeronautics and Space Administration
 Department of Veterans Affairs
 Environmental Protection Agency
 United States Information Agency
 National Science Foundation
 Panama Canal Commission
 Executive Office of the President
 Farm Credit Administration
 National Credit Union Administration
 Merit Systems Protection Board
 ACTION Agency
 United States Arms Control and Disarmament Agency
 Office of Thrift Supervision
 Federal Housing Finance Board
 National Labor Relations Board
 National Mediation Board
 Railroad Retirement Board
 American Battle Monuments Commission
 Federal Communications Commission
 Federal Trade Commission
 Interstate Commerce Commission
 Securities and Exchange Commission
 Office of Personnel Management
 United States International Trade Commission
 Export-Import Bank of the United States
 Federal Mediation and Conciliation Service
 Selective Service System
 Smithsonian Institution
 Federal Deposit Insurance Corporation
 Consumer Product Safety Commission
 Equal Employment Opportunity Commission
 Federal Maritime Commission
 National Transportation Safety Board
 Nuclear Regulatory Commission
 Overseas Private Investment Corporation
 Administrative Conference of the United States
 Board for International Broadcasting
 Commission on Civil Rights
 Commodity Futures Trading Commission
 The Peace Corps
 National Archives and Records Administration

ANNEX 1B

The Power Marketing Administrations of the Department of Energy
 Tennessee Valley Authority

ANNEX 2

Thresholds Applicable to Agencies listed in Annex 1A
 Goods contracts—130,000 SDRs (currently \$176,000)
 Construction contracts—\$6,500,000

Thresholds Applicable to Agencies listed in Annex 1B
 Goods contracts—\$450,000
 Construction contracts—\$6,500,000

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

§ 2512. Authority to encourage reciprocal competitive procurement practices

(a) Authority to bar procurement from non-designated countries

(1) In general

Subject to paragraph (2), the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

(A) shall, with respect to procurement covered by the Agreement, prohibit the procurement, after the date on which any waiver under section 2511(a) of this title first takes effect, of products—

(i) which are products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, and

(ii) which would otherwise be eligible products; and

(B) may, with respect to procurement covered by the Agreement, take such other actions within the President's authority as the President deems necessary.

(2) Exception

Paragraph (1) shall not apply in the case of procurements for which—

(A) there are no offers of products or services of the United States or of eligible products; or

(B) the offers of products or services of the United States or of eligible products are insufficient to fulfill the requirements of the United States Government.

(b) Deferrals and waivers

Notwithstanding subsection (a) of this section, but in furtherance of the objective of encouraging countries to become parties to the Agreement and provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products, the President may—

(1) waive the prohibition required by subsection (a)(1) of this section on procurement of products of a foreign country or instrumentality which has not yet become a party to the Agreement but—

(A) has agreed to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement, and

(B) maintains and enforces effective prohibitions on bribery and other corrupt practices in connection with its government procurement;

(2) authorize agency heads to waive, subject to interagency review and general policy guidance by the organization established under section 1872(a) of this title, such prohibition on a case-by-case basis when in the national interest; and

(3) authorize the Secretary of Defense to waive, subject to interagency review and policy guidance by the organization established under section 1872(a) of this title, such prohi-

bition for products of any country or instrumentality which enters into a reciprocal procurement agreement with the Department of Defense.

Before exercising the waiver authority under paragraph (1), the President shall consult with the appropriate private sector advisory committees established under section 2155 of this title and with the appropriate committees of the Congress.

(c) Report on impact of restrictions

(1) Impact on the economy

On or before July 1, 1981, the President shall report to the Committee on Ways and Means and the Committee on Government Operations of the House of Representatives and to the Committee on Finance and the Committee on Governmental Affairs of the Senate on the effects on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget) of the refusal of developed countries to allow the Agreement to cover the entities of the governments of such countries which are the principal purchasers of goods and equipment in appropriate product sectors.

(2) Recommendations for attaining reciprocity

The report required by paragraph (1) shall include an evaluation of alternative means to obtain equity and reciprocity in such product sectors, including (A) prohibiting the procurement of products of such countries by United States entities not covered by the Agreement, and (B) modifying the application of chapter 83 of title 41. The report shall include an analysis of the effect of such alternative means on the United States economy (including effects on employment, production, competition, costs and prices, technological development, export trade, balance of payments, inflation, and the Federal budget), and on successful negotiations on the expansion of the coverage of the Agreement pursuant to section 2514(a) and (b) of this title, other trade negotiating objectives, the relationship of the Federal Government to State and local governments, and such other factors as the President deems appropriate.

(3) Consultation

In the preparation of the report required by paragraph (1) and the evaluation and analysis required by paragraph (2), the President shall consult with representatives of the public, industry, and labor, and make available pertinent, nonconfidential information obtained in the course of such preparation to the advisory committees established pursuant to section 2155 of this title.

(d) Proposed action

(1) Presidential report

On or before October 1, 1981, the President shall prepare and transmit to the congressional committees referred to in subsection (c)(1) of this section a report which describes the actions he deems appropriate to establish

reciprocity with major industrialized countries in the area of Government procurement.

(2) Procedure

(A) Presidential determination

If the President determines that any changes in existing law or new statutory authority are required to authorize or to implement any action proposed in the report submitted under paragraph (1), he shall, on or after January 1, 1982, submit to the Congress a bill to accomplish such changes or provide such new statutory authority. Prior to submitting such a bill, the President shall consult with the appropriate committees of the Congress having jurisdiction over legislation involving subject matters which would be affected by such action, and shall submit to such committees a proposed draft of such bill.

(B) Congressional consideration

The appropriate committee of each House of the Congress shall give a bill submitted pursuant to subparagraph (A) prompt consideration and shall make its best efforts to take final committee action on such bill in an expeditious manner.

(Pub. L. 96-39, title III, § 302, July 26, 1979, 93 Stat. 236; Pub. L. 103-182, title III, § 381(b), Dec. 8, 1993, 107 Stat. 2129; Pub. L. 103-465, title III, § 343(a), (b), Dec. 8, 1994, 108 Stat. 4954, 4955.)

CODIFICATION

In subsec. (c)(2)(B), “chapter 83 of title 41” substituted for “title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.), commonly referred to as the Buy American Act” on authority of Pub. L. 111-350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-465, § 343(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “With respect to procurement covered by the Agreement, the President, in order to encourage additional countries to become parties to the Agreement and to provide appropriate reciprocal competitive government procurement opportunities to United States products and suppliers of such products—

“(1) shall prohibit the procurement, after the date on which any waiver under section 2511(a) of this title first takes effect, of products (A) which are products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, and (B) which are products covered under the Agreement for procurement by the United States; and

“(2) may take such other actions within his authority as he deems necessary.”

Subsec. (b). Pub. L. 103-465, § 343(b)(2), inserted concluding provisions.

Subsec. (b)(1). Pub. L. 103-465, § 343(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “delay, for a period not to exceed two years, the prohibition of procurement, required pursuant to subsection (a)(1) of this section, of products of a foreign country or instrumentality which is not designated pursuant to section 2511(b) of this title, except that no such delay shall be granted with respect to the procurement of products of any major industrial country;”.

1993—Subsec. (a)(1). Pub. L. 103-182 substituted “are products covered under the Agreement for procurement by the United States” for “would otherwise be eligible products”.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Operations of House of Representatives treated as referring to Committee on Government Reform and Oversight of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note under section 21 of Title 2, The Congress. Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 344 of title III of Pub. L. 103-465 provided that:

“(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle E (§§ 341-344 of title III of Pub. L. 103-465, amending this section and sections 2513 to 2515, 2517, and 2518 of this title, repealing section 2516 of this title, and amending provisions set out as a note under section 903 of Title 7, Agriculture] take effect on the date on which the Agreement on Government Procurement referred to in section 101(d)(17) [19 U.S.C. 3511(d)(17)] enters into force with respect to the United States [Jan. 1, 1995].

“(b) SECTION 342(g).—The amendments made by section 342(g) [amending provisions set out as a note under section 903 of Title 7] take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995].”

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 381(e) of Pub. L. 103-182, set out as a note under section 2511 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to United States Trade Representative, with authority delegated to Secretary of Defense to waive the prohibitions contained in subsec. (b)(3), see section 1-201 of Ex. Ord. No. 12260, Dec. 31, 1980, 46 F.R. 1653, set out as a note under section 2511 of this title.

§ 2513. Waiver of discriminatory purchasing requirements with respect to purchases of civil aircraft

The President may waive the application of the provisions of chapter 83 of title 41 in the case of any procurement of civil aircraft and related articles of a country or instrumentality which is a party to the Agreement on Trade in Civil Aircraft referred to in section 2503(c) of this title and approved under section 2503(a) of this title. The President may modify or withdraw any waiver granted pursuant to this section.

(Pub. L. 96-39, title III, § 303, July 26, 1979, 93 Stat. 238; Pub. L. 103-465, title III, § 342(a), Dec. 8, 1994, 108 Stat. 4953.)

CODIFICATION

In text, “chapter 83 of title 41” substituted for “title III of the Act of March 3, 1933 (41 U.S.C. 10a et seq.),

popularly referred to as the Buy American Act,” on authority of Pub. L. 111-350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

AMENDMENTS

1994—Pub. L. 103-465 inserted “referred to in section 2503(c) of this title and approved under section 2503(a) of this title” after “Civil Aircraft”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States [Jan. 1, 1995], see section 344(a) of Pub. L. 103-465, set out as a note under section 2512 of this title.

EFFECTIVE DATE

Section effective July 26, 1979, but authority of President to grant waivers under this section effective on Jan. 1, 1980, see section 309 of Pub. L. 96-39, set out as a note under section 2511 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to United States Trade Representative, see section 1-103(b) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 990, set out as a note under section 2171 of this title.

§ 2514. Expansion of the coverage of the Agreement

(a) Overall negotiating objective

The President shall seek in the renegotiations provided for in article XXIV(7) of the Agreement more open and equitable market access abroad, and the harmonization, reduction, or elimination of devices which distort trade or commerce related to Government procurement, with the overall goal of maximizing the economic benefit to the United States through maintaining and enlarging foreign markets for products of United States agriculture, industry, mining, and commerce, the development of fair and equitable market opportunities, and open and non-discriminatory world trade. In carrying out the provisions of this subsection, the President shall consider the assessment made in the report required under section 2516(a)¹ of this title.

(b) Sector negotiating objectives

The President shall seek, consistent with the overall objective set forth in subsection (a) of this section and to the maximum extent feasible, with respect to appropriate product sectors, competitive opportunities for the export of United States products to the developed countries of the world equivalent to the competitive opportunities afforded by the United States, taking into account all barriers to, and other distortions of, international trade affecting that sector.

(c) Independent verification objective

The President shall seek to establish in the renegotiation provided for in article XXIV(7) of the Agreement a system for independent verification of information provided by parties to the Agreement to the Committee on Government Procurement pursuant to article XIX(5) of the Agreement.

¹ See References in Text note below.

(d) Reports on negotiations**(1) Report in the event of inadequate progress**

If, during the renegotiations of the Agreement, the President at any time determines that the renegotiations are not progressing satisfactorily and are not likely to result, within twelve months of the commencement thereof, in an expansion of the Agreement to cover purchases by the entities of the governments of developed countries which are the principal purchasers of goods and equipment in appropriate product sectors, he shall so report to the congressional committees referred to in section 2512(c)(1) of this title. Taking into account the objectives set forth in subsections (a) and (b) of this section and the factors required to be analyzed under section 2512(c) of this title, the President shall further report to such committees appropriate actions to seek reciprocity in such product sectors with such countries in the area of government procurement.

(2) Legislative recommendations

Taking into account the factors required to be analyzed under section 2512(c) of this title, the President may recommend to the Congress legislation (with respect to entities of the Government which are not covered by the Agreement) which may prohibit such entities from purchasing products of such countries.

(3) Annual reports

Each annual report of the President under section 163(a) of the Trade Act of 1974 [19 U.S.C. 2213(a)] made after July 26, 1979 shall report the actions, if any, the President deemed appropriate to establish reciprocity in appropriate product sectors with major industrial countries in the area of government procurement.

(e) Extension of nondiscrimination and national treatment

Before exercising the waiver authority in section 2511 of this title for procurement not covered by the Agreement on the date it enters into force with respect to the United States, the President shall follow the consultation provisions of section 135 [19 U.S.C. 2155] and chapter 6 of title I of the Trade Act of 1974 [19 U.S.C. 2211 et seq.] for private sector and congressional consultations.

(Pub. L. 96-39, title III, § 304, July 26, 1979, 93 Stat. 238; Pub. L. 103-465, title III, § 342(b), Dec. 8, 1994, 108 Stat. 4953; Pub. L. 104-295, § 20(c)(11), Oct. 11, 1996, 110 Stat. 3528.)

REFERENCES IN TEXT

Section 2516 of this title, referred to in subsec. (a), was repealed by Pub. L. 103-355, title VII, § 7206(c), Oct. 13, 1994, 108 Stat. 3382, and Pub. L. 103-465, title III, § 342(d), Dec. 8, 1994, 108 Stat. 4953.

The Trade Act of 1974, referred to in subsec. (e), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 6 of title I of the Trade Act of 1974 is classified generally to part 6 of subchapter I (§ 2211 et seq.) of chapter 12 of this title. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-295, § 20(c)(11)(A), struck out comma after “XXIV(7)”.

Subsec. (c). Pub. L. 104-295, § 20(c)(11)(B), struck out comma after “XXIV(7)” and “XIX(5)”.

1994—Subsec. (a). Pub. L. 103-465, § 342(b)(1), substituted “article XXIV(7)” for “part IX, paragraph 6”.

Subsec. (c). Pub. L. 103-465, § 342(b)(1), (2), substituted “article XXIV(7)” for “part IX, paragraph 6” and “article XIX(5)” for “part VI, paragraph 9”.

Subsec. (e). Pub. L. 103-465, § 342(b)(3), substituted “the date it enters into force with respect to the United States” for “July 26, 1979”.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States [Jan. 1, 1995], see section 344(a) of Pub. L. 103-465, set out as a note under section 2512 of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to United States Trade Representative, see section 1-201 of Ex. Ord. No. 12260, Dec. 31, 1980, 46 F.R. 1653, set out as a note under section 2511 of this title.

AGREEMENT ON GOVERNMENT PROCUREMENT: ENTRY INTO FORCE

The Agreement on Government Procurement, as referred to in section 3511(d)(17) of this title, entered into force with respect to the United States on Jan. 1, 1995. See note set out under section 3511 of this title.

§ 2515. Monitoring and enforcement**(a) Monitoring and enforcement structure recommendations**

In the preparation of the recommendations for the reorganization of trade functions, the President shall ensure that careful consideration is given to monitoring and enforcing the requirements of the Agreement and this subchapter, with particular regard to the tendering procedures required by the Agreement or otherwise agreed to by a country or instrumentality likely to be designated pursuant to section 2511(b) of this title.

(b) Rules of origin**(1) Advisory rulings and final determinations**

For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.

(2) Penalties for fraudulent conduct

In addition to any other provisions of law which may be applicable, section 1001 of title 18 shall apply to fraudulent conduct with respect to the origin of products for purposes of qualifying for a waiver under section 2511 of this title or avoiding a prohibition under section 2512 of this title.

(c) Report to Congress on rules of origin**(1) Domestic administrative practices**

As soon as practicable after the close of the two-year period beginning on the date on which any waiver under section 2511(a) of this title first takes effect, the President shall prepare and transmit to Congress a report con-

taining an evaluation of administrative practices under any provision of law which requires determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce. Such evaluation shall be accompanied by the President's recommendations for legislative and executive measures required to improve and simplify and to make more uniform and consistent such practices. Such evaluation and recommendations shall take into account the special problems affecting insular possessions of the United States with respect to such practices.

(2) Foreign administrative practices

The report required under paragraph (1) shall contain an evaluation of the administrative practices under the laws of each major industrial country which require determinations to be made of the country of origin of goods, products, commodities, or other articles of commerce, including an assessment of such practices on the exports of the United States.

(Pub. L. 96-39, title III, §305, July 26, 1979, 93 Stat. 239; Pub. L. 100-418, title VII, §7003, Aug. 23, 1988, 102 Stat. 1548; Pub. L. 103-465, title III, §§341, 342(c), 343(c), Dec. 8, 1994, 108 Stat. 4951, 4953, 4955; Pub. L. 104-295, §20(c)(10), (13), Oct. 11, 1996, 110 Stat. 3528.)

AMENDMENTS

1996—Subsec. (d)(2)(B), (C). Pub. L. 104-295, §20(c)(10), struck out “or” at end of subpar. (B) and substituted semicolon for period at end of subpar. (C).

Subsec. (g)(1). Pub. L. 104-295, §20(c)(13)(A), in introductory provisions, substituted “of subsection (d)(2) of this section” for “of such subsection” and inserted “of subsection (d)(2) of this section” after “(as the case may be)”.

Subsec. (g)(3). Pub. L. 104-295, §20(c)(13)(B), substituted “eliminated the practices” for “eliminated the the practices” and inserted “of subsection (d)(2) of this section” after “(as the case may be)”.

1994—Subsec. (d)(1). Pub. L. 103-465, §342(c), substituted “April 30 of each year,” for “April 30, 1990, and annually on April 30 thereafter.”

Subsec. (d)(2)(D), (E). Pub. L. 103-465, §341(c)(1), added subpars. (D) and (E) which read as follows:

“(D)(i) are not signatories to the Agreement;
“(ii) fail to apply transparent and competitive procedures to its government procurement equivalent to those in the Agreement; and

“(iii) whose products or services are acquired in significant amounts by the United States Government; or
“(E)(i) are not signatories to the Agreement;

“(ii) fail to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement; and

“(iii) whose products or services are acquired in significant amounts by the United States Government.”

Subsec. (d)(3)(C). Pub. L. 103-465, §341(c)(2), inserted before period at end “, including the failure to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement”.

Subsec. (f)(2). Pub. L. 103-465, §341(a)(1), substituted “the 18 months” for “a year” in introductory provisions.

Subsec. (f)(2)(B) to (D). Pub. L. 103-465, §341(a)(2)-(4), struck out “or” at end of subpar. (B), redesignated subpar. (C) as (D), and added a new subpar. (C) which read as follows: “the procedures result in a determination providing a specific period of time for the other participant to bring its practices into compliance with the Agreement, or”.

Subsec. (f)(3). Pub. L. 103-465, §341(b)(1), amended heading and text of par. (3) to read as follows:

“(3) SANCTIONS AFTER DISPUTE RESOLUTION FAILS.—

“(A) FAILURES RESULTING IN SANCTIONS.—If—

“(i) within 18 months from the date dispute settlement procedures are initiated with a signatory country pursuant to this section—

“(I) such procedures are not concluded, or

“(II) the country has not met the requirements of subparagraph (A) or (B) of paragraph (2), or

“(ii) the period of time provided for pursuant to paragraph (2)(C) has expired and procedures for suspending concessions under the Agreement have been completed,

then the sanctions described in subparagraph (B) shall be imposed.

“(B) SANCTIONS.—

“(i) IN GENERAL.—If subparagraph (A) applies to any signatory country—

“(I) the signatory country shall be considered as a signatory not in good standing of the Agreement and the prohibition on procurement contained in section 10b-1 of title 41 shall apply to such country, and

“(II) the President shall revoke the waiver of discriminatory purchasing requirements granted to the signatory country pursuant to section 2511(a) of this title.

“(ii) TIME SANCTIONS ARE IMPOSED.—Any sanction—

“(I) described in clause (i)(I) shall apply from the date that is the last day of the 18-month period described in subparagraph (A)(i) or, in the case of paragraph (2)(C), from the date procedures for suspending concessions under the Agreement have been completed, and

“(II) described in clause (i)(II) shall apply beginning on the day after the date described in subclause (I).”

Subsec. (f)(4). Pub. L. 103-465, §341(b)(2), substituted “subclause (I) or (II) of paragraph (3)(B)(i)” for “subparagraph (A) or (B) of paragraph (3)” in introductory provisions.

Subsec. (g)(1). Pub. L. 103-465, §343(c)(1), in introductory provisions, substituted “(B), (C), (D), or (E)” for “(B) or (C)” and “the practices regarding government procurement identified under subparagraph (B)(ii), (C)(ii), (D)(ii), or (E)(ii) (as the case may be)” for “their discriminatory procurement practices”.

Subsec. (g)(3). Pub. L. 103-465, §343(c)(2), substituted “the practices regarding government procurement identified under subparagraph (B)(ii), (C)(ii), (D)(ii), or (E)(ii) (as the case may be)” for “discrimination identified pursuant to subsection (d)(2)(B) or (C) of this section”.

1988—Subsecs. (d) to (k). Pub. L. 100-418, §§7003, 7004, temporarily added subsecs. (d) to (k) which read as follows:

“(d) ANNUAL REPORT ON FOREIGN DISCRIMINATION.—

“(1) ANNUAL REPORT REQUIRED.—The President shall, no later than April 30 1990, and annually on April 30 thereafter, submit to the appropriate committees of the House of Representatives and the Committee on Governmental Affairs of the Senate, as well as other appropriate Senate committees, a report on the extent to which foreign countries discriminate against United States products or services in making government procurements.

“(2) IDENTIFICATIONS REQUIRED.—In the annual report, the President shall identify (and continue to identify subject to subsections (f)(5) and (g)(3) of this section) any countries, other than least developed countries, that—

“(A) are signatories to the Agreement and not in compliance with the requirements of the Agreement;

“(B)(i) are signatories to the Agreement; (ii) are in compliance with the Agreement but, in the government procurement of products or services not covered by the Agreement, maintain a significant and persistent pattern or practice of discrimination against United States products or services which

results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government; or

“(C)(i) are not signatories to the Agreement; (ii) maintain, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and (iii) whose products or services are acquired in significant amounts by the United States Government.

“(3) CONSIDERATIONS IN MAKING IDENTIFICATIONS.—In making the identifications required by paragraph (1), the President shall—

“(A) use the requirements of the Agreement, government procurement practices, and the effects of such practices on United States businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for United States products or services;

“(B) take into account, among other factors, whether and to what extent countries that are signatories to the Agreement, and other countries described in paragraph (1) of this subsection—

“(i) use sole-sourcing or otherwise noncompetitive procedures for procurements that could have been conducted using competitive procedures;

“(ii) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the Agreement's value threshold or to make the procurements less attractive to United States businesses;

“(iii) announce procurement opportunities with inadequate time intervals for United States businesses to submit bids; and

“(iv) use specifications in such a way as to limit the ability of United States suppliers to participate in procurements; and

“(C) use any other additional criteria deemed appropriate.

“(4) CONTENTS OF REPORTS.—The reports required by this subsection shall include, with respect to each country identified under subparagraph (A), (B), or (C) of paragraph (1), the following:

“(A) a description of the specific nature of the discrimination, including (for signatory countries) any provision of the Agreement with which the country is not in compliance;

“(B) an identification of the United States products or services that are affected by the noncompliance or discrimination;

“(C) an analysis of the impact of the noncompliance or discrimination on the commerce of the United States and the ability of United States companies to compete in foreign government procurement markets; and

“(D) a description of the status, action taken, and disposition of cases of noncompliance or discrimination identified in the preceding annual report with respect to such country.

“(5) INFORMATION AND ADVICE FROM GOVERNMENT AGENCIES AND UNITED STATES BUSINESSES.—In developing the annual reports required by this subsection, the President shall seek information and advice from executive agencies through the interagency trade organization established under section 1872(a) of this title, and from United States businesses in the United States and in countries that are signatories to the Agreement and in other foreign countries whose products or services are acquired in significant amounts by the United States Government.

“(6) IMPACT OF NONCOMPLIANCE.—The President shall take into account, in identifying countries in the annual report and in any action required by this section, the relative impact of any noncompliance with the Agreement or of other discrimination on United States commerce and the extent to which

such noncompliance or discrimination has impeded the ability of United States suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government.

“(7) IMPACT ON PROCUREMENT COSTS.—Such report shall also include an analysis of the impact on United States Government procurement costs that may occur as a consequence of any sanctions that may be required by subsection (f) or (g) of this section.

“(e) CONSULTATION.—No later than the date the annual report is submitted under subsection (d)(1) of this section, the United States Trade Representative, on behalf of the United States, shall request consultations with any countries identified in the report to obtain their compliance with the Agreement or the elimination of their discriminatory procurement practices unless the country is identified as discriminatory pursuant to subsection (d)(1) of this section in the preceding annual report.

“(f) PROCEDURES WITH RESPECT TO VIOLATIONS OF AGREEMENT.—

“(1) INITIATION OF DISPUTE SETTLEMENT PROCEDURES.—If, within 60 days after the annual report is submitted under subsection (d)(1) of this section, a signatory country identified pursuant to subsection (d)(1)(A) of this section has not complied with the Agreement, then the United States Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under the Agreement unless such proceedings are already underway pursuant to the identification of the signatory country under subsection (d)(1) of this section as not in compliance in a preceding annual report.

“(2) SETTLEMENT OF DISPUTES.—If, before the end of a year following the initiation of dispute settlement procedures—

“(A) the other participant to the dispute settlement procedures has complied with the Agreement,

“(B) the other participant to the procedures takes the action recommended as a result of the procedures to the satisfaction of the President, or

“(C) the procedures result in a determination requiring no action by the other participant, the President shall take no action to limit Government procurement from that participant.

“(3) SANCTIONS AFTER FAILURE OF DISPUTE RESOLUTION.—If the dispute settlement procedures initiated pursuant to this subsection with any signatory country to the Agreement are not concluded within one year from their initiation or the country has not met the requirements of paragraph (2)(A) or (2)(B), then—

“(A) from the end of such one year period, such signatory country shall be considered as a signatory not in good standing of the Agreement and the prohibition on procurement contained in section 10b-1 of title 41 shall apply to such country; and

“(B) on the day after the end of such one year period, the President shall revoke the waiver of discriminatory purchasing requirements granted to that signatory country pursuant to section 2511(a) of this title.

“(4) WITHHOLDING AND MODIFICATION OF SANCTIONS.—If the President determines that imposing or continuing the sanctions required by subparagraph (A) or (B) of paragraph (3) would harm the public interest of the United States, the President may, to the extent necessary to apply appropriate limitations that are equivalent, in their effect, to the noncompliance with the Agreement by that signatory country—

“(A) withhold the imposition of either (but not both) of such sanctions;

“(B) modify or restrict the application of either or both such sanctions, subject to such terms and conditions as the President considers appropriate; or

“(C) take any combination of the actions permitted by subparagraph (A) or (B) of this paragraph.

“(5) TERMINATION OF SANCTIONS AND REINSTATEMENT OF WAIVERS.—The President may terminate the sanctions imposed under paragraph (3) or (4), reinstate the waiver of discriminatory purchasing requirements granted to that signatory country pursuant to section 2511(a) of this title, and remove that country from the report under subsection (d)(1) of this section at such time as the President determines that—

“(A) the signatory country has complied with the Agreement;

“(B) the signatory country has taken corrective action as a result of the dispute settlement procedures to the satisfaction of the President; or

“(C) the dispute settlement procedures result in a determination requiring no action by the other signatory country.

“(g) PROCEDURES WITH RESPECT TO OTHER DISCRIMINATION.—

“(1) IMPOSITION OF SANCTIONS.—If, within 60 days after the annual report is submitted under subsection (d)(1) of this section, a country that is identified pursuant to subparagraph (B) or (C) of such subsection has not eliminated their discriminatory procurement practices, then, on the day after the end of such 60-day period—

“(A) the President shall identify such country as a country that maintains, in government procurement, a significant and persistent pattern or practice of discrimination against United States products or services which results in identifiable harm to United States businesses; and

“(B) the prohibition on procurement contained in section 10b-1 of title 41 shall apply to such country.

“(2) WITHHOLDING AND MODIFICATION OF SANCTIONS.—If the President determines that imposing or continuing the sanction required by paragraph (1) would harm the public interest of the United States, the President may, to the extent necessary to impose appropriate limitations that are equivalent, in their effect, to the discrimination against United States products or services in government procurement by that country, modify or restrict the application of such sanction, subject to such terms and conditions as the President considers appropriate.

“(3) TERMINATION OF SANCTIONS.—The President may terminate the sanctions imposed under paragraph (1) or (2) and remove a country from the report under subsection (d)(1) of this section at such time as the President determines that the country has eliminated the discrimination identified pursuant to subsection (d)(2)(B) or (C) of this section.

“(h) LIMITATIONS ON IMPOSING SANCTIONS.—

“(1) AVOIDING ADVERSE IMPACT ON COMPETITION.—The President shall not take any action under subsection (f) or (g) of this section if the President determines that such action—

“(A) would limit the procurement or class of procurements to, or would establish a preference for, the products or services of a single manufacturer or supplier; or

“(B) would, with respect to any procurement or class of procurements, result in an insufficient number of potential or actual bidders to assure procurement of services, articles, materials, or supplies of requisite quality at competitive prices.

“(2) ADVICE FROM U.S. AGENCIES AND BUSINESSES.—The President, in taking any action under this subsection to limit government procurements from foreign countries, shall seek the advice of executive agencies through the interagency trade organization established under section 1872(a) of this title and the advice of United States businesses and other interested parties.

“(i) RENEGOTIATION TO SECURE FULL AND OPEN COMPETITION.—The President shall instruct the United States Trade Representative, in conducting renegotiations of the Agreement, to seek improvements in the Agreement that will secure full and open competition consistent with the requirements imposed by the amendments made by the Competition in Contracting Act (Public Law 98-369; 98 Stat. 1175).

“(j) FEDERAL REGISTER NOTICES OF ACTIONS.—

“(1) NOTICES REQUIRED.—A notice shall be published in the Federal Register on the date of any action under this section, describing—

“(A) the results of dispute settlement proceedings under subsection (f)(2) of this section;

“(B) any sanction imposed under subsection (f)(3) or (g)(1) of this section;

“(C) any withholding, modification, or restriction of any sanction under subsection (f)(4) or (g)(2) of this section; and

“(D) the termination of any sanction under subsection (f)(5) or (g)(3) of this section.

“(2) PUBLICATION OF DETERMINATIONS LIFTING SANCTIONS.—A notice describing the termination of any sanction under subsection (f)(5) or (g)(3) of this section shall include a copy of the President's determination under such subsection.

“(k) GENERAL REPORT ON ACTIONS UNDER THIS SECTION.—

“(1) ADVICE TO CONGRESS.—The President shall, as necessary, advise the Congress and, by no later than April 30, 1994, submit to the the [sic] appropriate committees of the House of Representatives, and to the Committee on Governmental Affairs and other appropriate committees of the Senate, a general report on actions taken pursuant to this section.

“(2) CONTENTS OF REPORT.—The general report required by this subsection shall include an evaluation of the adequacy and effectiveness of actions taken pursuant to subsections (e), (f), and (g) of this section as a means toward eliminating discriminatory government procurement practices against United States businesses.

“(3) LEGISLATIVE RECOMMENDATIONS.—The general report may also include, if appropriate, legislative recommendations for enhancing the usefulness of this section or for other measures to be used as means for eliminating or responding to discriminatory foreign government procurement practices.”

See Termination Date of 1988 Amendment note below.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States [Jan. 1, 1995], see section 344(a) of Pub. L. 103-465, set out as a note under section 2512 of this title.

TERMINATION DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by former subsec. (k) of this section, extends such date, see section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 2511 of this title.

TRANSFER OF FUNCTIONS

Functions of Secretary of the Treasury under subsec. (b) transferred to Secretary of Commerce, to exercise in consultation with Secretary of the Treasury, by section 5(a)(1)(A) of Reorg. Plan No. 3 of 1979, 44 F.R. 69274, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title.

Pub. L. 96-609, title II, §205, Dec. 28, 1980, 94 Stat. 3562, provided that: “Notwithstanding subparagraph (1)(A) of subsection 5(a) of Reorganization Plan No. 3 of 1979 (44 F.R. 69272, 93 Stat. 1381) [set out as a note under section 2171 of this title], the Secretary of the Treasury or his delegate shall issue such advisory rulings and make such determinations as are authorized by subsection 305(b)(1) of the Trade Agreements Act of 1979 (19 U.S.C. 2515(b)(1)).”

DELEGATION OF FUNCTIONS

Functions of President under subsec. (c) delegated to United States Trade Representative, see section 1-201

of Ex. Ord. No. 12260, Dec. 31, 1980, 46 F.R. 1653, set out as a note under section 2511 of this title.

§ 2516. Repealed. Pub. L. 103-355, title VII, § 206(c), Oct. 13, 1994, 108 Stat. 3382; Pub. L. 103-465, title III, § 342(d), Dec. 8, 1994, 108 Stat. 4953

Section, Pub. L. 96-39, title III, § 306, July 26, 1979, 93 Stat. 240, related to labor surplus area studies.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 103-465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States [Jan. 1, 1995], see section 344(a) of Pub. L. 103-465, set out as an Effective Date of 1994 Amendment note under section 2512 of this title.

§ 2517. Availability of information to Members of Congress designated as official advisers

The United States Trade Representative shall make available to the Members of Congress designated as official advisers pursuant to section 2211 of this title information compiled by the Committee on Government Procurement under article XIX(5) of the Agreement.

(Pub. L. 96-39, title III, § 307, July 26, 1979, 93 Stat. 240; 1979 Reorg. Plan No. 3, § 1(b)(1), eff. Jan. 2, 1980, 44 F.R. 69273, 93 Stat. 1381; Pub. L. 103-465, title III, § 342(e), Dec. 8, 1994, 108 Stat. 4953.)

AMENDMENTS

1994—Pub. L. 103-465 substituted “article XIX(5)” for “part VI, paragraph 9,”.

CHANGE OF NAME

“United States Trade Representative” substituted in text for “Special Representative for Trade Negotiations” pursuant to Reorg. Plan No. 3 of 1979, § 1(1)(b), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title. See, also, section 2171 of this title as amended by Pub. L. 97-456.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States [Jan. 1, 1995], see section 344(a) of Pub. L. 103-465, set out as a note under section 2512 of this title.

§ 2518. Definitions

As used in this subchapter—

(1) Agreement

The term “Agreement” means the Agreement on Government Procurement referred to in section 3511(d)(17) of this title, as submitted to the Congress, but including rectifications, modifications, and amendments which are accepted by the United States.

(2) Civil aircraft

The term “civil aircraft and related articles” means—

(A) all aircraft other than aircraft to be purchased for use by the Department of Defense or the United States Coast Guard;

(B) the engines (and parts and components for incorporation therein) of such aircraft;

(C) any other parts, components, and subassemblies for incorporation in such aircraft; and

(D) any ground flight simulators, and parts and components thereof, for use with respect to such aircraft,

whether to be purchased for use as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of such aircraft, and without regard to whether such aircraft or articles receive duty-free treatment pursuant to section 601(a)(2).

(3) Developed countries

The term “developed countries” means countries so designated by the President.

(4) Eligible product

(A) In general

The term “eligible product” means, with respect to any foreign country or instrumentality that is—

(i) a party to the Agreement, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States;

(ii) a party to the North American Free Trade Agreement, a product or service of that country or instrumentality which is covered under the North American Free Trade Agreement for procurement by the United States;

(iii) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2003, and before January 2, 2005, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States;

(iv) a party to the Dominican Republic-Central America-United States Free Trade Agreement, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States;

(v) a party to a free trade agreement that entered into force with respect to the United States after December 31, 2005, and before July 2, 2006, a product or service of that country or instrumentality which is covered under the free trade agreement for procurement by the United States;

(vi) a party to the United States-Oman Free Trade Agreement, a product or service of that country or instrumentality which is covered under that Agreement for procurement by the United States; or

(vii) a party to the United States-Peru Trade Promotion Agreement, a product or service of that country or instrumentality which is covered under that agreement for procurement by the United States.

(B) Rule of origin

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or

instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(C) Lowered threshold for certain products as a consequence of United States-Israel free trade area provisions

The term “eligible product” includes a product or service of Israel for which the United States is obligated to waive Buy National restrictions under—

(i) the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel, regardless of the thresholds provided for in the Agreement (as defined in paragraph (1)), or

(ii) any subsequent agreement between the United States and Israel which lowers on a reciprocal basis the applicable threshold for entities covered by the Agreement.

(D) Lowered threshold for certain products as a consequence of United States-Canada Free-Trade Agreement

Except as otherwise agreed by the United States and Canada under paragraph 3 of article 1304 of the United States-Canada Free-Trade Agreement, the term “eligible product” includes a product or service of Canada having a contract value of \$25,000 or more that would be covered for procurement by the United States under the Agreement (as defined in paragraph (1)), but for the thresholds provided for in the Agreement.

(5) Instrumentality

The term “instrumentality” shall not be construed to include an agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(6) Least developed country

The term “least developed country” means any country on the United Nations General Assembly list of least developed countries.

(7) Major industrial country

The term “major industrial country” means any such country as defined in section 2136 of this title and any instrumentality of such a country.

(Pub. L. 96-39, title III, §308, July 26, 1979, 93 Stat. 241; Pub. L. 99-47, §7, June 11, 1985, 99 Stat. 84; Pub. L. 100-449, title III, §306, Sept. 28, 1988, 102 Stat. 1876; Pub. L. 103-182, title III, §381(c), Dec. 8, 1993, 107 Stat. 2129; Pub. L. 103-465, title III, §342(f), Dec. 8, 1994, 108 Stat. 4953; Pub. L. 104-295, §20(c)(12), Oct. 11, 1996, 110 Stat. 3528; Pub. L. 108-286, title IV, §401, Aug. 3, 2004, 118 Stat. 950; Pub. L. 109-53, title IV, §401, Aug. 2, 2005, 119 Stat. 495; Pub. L. 109-169, title IV, §401, Jan. 11, 2006, 119 Stat. 3599; Pub. L. 109-283, title IV, §401, Sept. 26, 2006, 120 Stat. 1209; Pub. L. 110-138, title IV, §401, Dec. 14, 2007, 121 Stat. 1486.)

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 110-138, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 109-283, see Effective and Termination Dates of 2006 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 109-169, see Effective and Termination Dates of 2006 Amendment note below.

For termination of amendment by section 107(d) of Pub. L. 109-53, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 108-286, see Effective and Termination Dates of 2004 Amendment note below.

REFERENCES IN TEXT

Section 601(a)(2), referred to in par. (2), is section 601(a)(2) of Pub. L. 96-39 title VI, July 26, 1979, 93 Stat. 267, which directed a duty rate of “Free” in the rate column numbered 1 of the Tariff Schedules of the United States for articles classified under specified items between 518.51 and 772.65 which the President determines would provide coverage comparable to that provided by foreign countries in the Annex to the Agreement on Trade in Civil Aircraft if such articles were certified for use in civil aircraft in accordance with headnote 3 to schedule 6, part 6, subpart C of the Tariff Schedules of the United States. The Tariff Schedules of the United States were replaced by the Harmonized Tariff Schedule of the United States, which is not set out in the Code. See Publication of Harmonized Tariff Schedule note set out under section 1202 of the title.

AMENDMENTS

2007—Par. (4)(A)(vii). Pub. L. 110-138, §§107(c), 401, temporarily added cl. (vii). See Effective and Termination Dates of 2007 Amendment note below.

2006—Par. (4)(A)(v). Pub. L. 109-169, §§106(c), 401, temporarily added cl. (v). See Effective and Termination Dates of 2006 Amendment note below.

Par. (4)(A)(vi). Pub. L. 109-283, §§107(c), 401, temporarily added cl. (vi). See Effective and Termination Dates of 2006 Amendment note below.

2005—Par. (4)(A)(iv). Pub. L. 109-53, §§107(d), 401, temporarily added cl. (iv). See Effective and Termination Dates of 2005 Amendment note below.

2004—Par. (4)(A)(iii). Pub. L. 108-286, §§106(c), 401, temporarily added cl. (iii). See Effective and Termination Dates of 2004 Amendment note below.

1996—Par. (4)(D). Pub. L. 104-295 substituted “under the Agreement” for “under the the Agreement”.

1994—Par. (1). Pub. L. 103-465, §342(f)(1), substituted “section 3511(d)(17) of this title” for “section 2503(c) of this title”.

Par. (4)(C). Pub. L. 103-465, §342(f)(2)(A), substituted “for which the United States is obligated to waive Buy National restrictions under—” and cls. (i) and (ii) for “having a contract value of \$50,000 or more which would be covered for procurement by the United States under the Agreement on Government Procurement as in effect on the date on which the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel enters into force, but for the SDR 150,000 threshold provided for in article I(1)(b) of the Agreement on Government Procurement.”

Par. (4)(D). Pub. L. 103-465, §342(f)(2)(B), substituted “the Agreement (as defined in paragraph (1)), but for the thresholds provided for in the Agreement.” for “GATT Agreement on Government Procurement, but for the SDR threshold provided for in article I(1)(b) of the GATT Agreement on Government Procurement.”

1993—Par. (4)(A). Pub. L. 103-182 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “The term ‘eligible product’ means, with respect to any foreign country or instrumentality, a product or service of that country or instrumentality which is covered under the Agreement for procurement by the United States.”

1988—Par. (4)(D). Pub. L. 100-449 added subpar. (D).
 1985—Par. (4)(C). Pub. L. 99-47 added subpar. (C).

**EFFECTIVE AND TERMINATION DATES OF 2007
 AMENDMENT**

Amendment by Pub. L. 110-138 effective on the date the United States-Peru Trade Promotion Agreement enters into force (Feb. 1, 2009) and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 110-138, set out in a note under section 3805 of this title.

**EFFECTIVE AND TERMINATION DATES OF 2006
 AMENDMENT**

Amendment by Pub. L. 109-283 effective on the date on which the United States-Oman Free Trade Agreement enters into force (Jan. 1, 2009) and to cease to be effective on the date on which the Agreement terminates, see section 107(a), (c) of Pub. L. 109-283, set out in a note under section 3805 of this title.

Amendment by Pub. L. 109-169 effective on the date on which the United States-Bahrain Free Trade Agreement enters into force (Aug. 1, 2006) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 109-169, set out in a note under section 3805 of this title.

**EFFECTIVE AND TERMINATION DATES OF 2005
 AMENDMENT**

Amendment by Pub. L. 109-53 effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CFTA-DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109-53, set out as an Effective and Termination Dates note under section 4001 of this title.

**EFFECTIVE AND TERMINATION DATES OF 2004
 AMENDMENT**

Amendment by Pub. L. 108-286 effective on the date on which the United States-Australia Free Trade Agreement enters into force (Jan. 1, 2005) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 108-286, set out in a note under section 3805 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 effective on the date on which the Agreement on Government Procurement, referred to in section 3511(d)(17) of this title, enters into force with respect to the United States (Jan. 1, 1995), see section 344(a) of Pub. L. 103-465, set out as a note under section 2512 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States (Jan. 1, 1994), see section 381(e) of Pub. L. 103-182, set out as a note under section 2511 of this title.

**EFFECTIVE AND TERMINATION DATES OF 1988
 AMENDMENT**

Amendment by Pub. L. 100-449 effective on date United States-Canada Free-Trade Agreement enters into force (Jan. 1, 1989), and to cease to have effect on date Agreement ceases to be in force, see section 501(a), (c) of Pub. L. 100-449, set out in a note under section 2112 of this title.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security,

and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

**SUBCHAPTER II—TECHNICAL BARRIERS TO
 TRADE (STANDARDS)**

PART A—OBLIGATIONS OF THE UNITED STATES

§ 2531. Certain standards-related activities

(a) No bar to engaging in standards activity

Nothing in this subchapter may be construed—

(1) to prohibit a Federal agency from engaging in activity related to standards-related measures, including any such measure relating to safety, the protection of human, animal, or plant life or health, the environment, or consumers; or

(2) to limit the authority of a Federal agency to determine the level it considers appropriate of safety or of protection of human, animal, or plant life or health, the environment, or consumers.

(b) Unnecessary obstacles

Nothing in this subchapter may be construed as prohibiting any private person, Federal agency, or State agency from engaging in standards-related activities that do not create unnecessary obstacles to the foreign commerce of the United States. No standards-related activity of any private person, Federal agency, or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

(Pub. L. 96-39, title IV, § 401, July 26, 1979, 93 Stat. 242; Pub. L. 103-465, title III, § 351(b), Dec. 8, 1994, 108 Stat. 4955.)

AMENDMENTS

1994—Pub. L. 103-465 added subsec. (a), designated existing provisions as subsec. (b), and inserted subsec. (b) heading.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 352 of title III of Pub. L. 103-465 provided that: “This subtitle [subtitle F (§§ 351, 352) of title III of Pub. L. 103-465, amending this section and sections 2532, 2544, 2571, and 2573 of this title and repealing provisions set out below] and the amendments made by this subtitle take effect on the date on which the WTO Agreement enters into force with respect to the United States [Jan. 1, 1995].”

EFFECTIVE DATE

Section 454 of Pub. L. 96-39, which provided that this subchapter was to take effect on Jan. 1, 1980, if the Agreement on Technical Barriers to Trade entered into force with respect to the United States by that date, was repealed by Pub. L. 103-465, title III, § 351(g), Dec. 8, 1994, 108 Stat. 4957.

§ 2532. Federal standards-related activities

No Federal agency may engage in any standards-related activity that creates unnecessary